IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

**O R D E R**

S.B.CRIMINAL MISC. PETITION NO. 906/2006
(Jayant Kumar Pandiya Vs. State of Rajasthan)

Date of Order : 01/09/2006

**PRESENT**

**HON'BLE MR. JUSTICE H.R.PANWAR**

Mr. Rajesh Parihar for the petitioner.
Mr. Ashok Upadhyay, public prosecutor.

**BY THE COURT**:-

**Reportable**

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 01.07.2006 passed by Sessions Judge, Dungarpur (for short 'the revisional court' hereinafter) whereby the revision petition filed by the petitioner against the order dated 17.02.2005 passed by Chief Judicial Magistrate, Dungarpur (for short 'the trial court' hereinafter) was dismissed.

The brief facts of the case to the extent they are relevant and necessary for the decision of the instant criminal misc. petition are that on 29.3.1999, the Block Development Officer, Panchayat Samiti Bichhiwara lodged a report against Block Development Officer Jayant Kumar Pandaya, Junior Accountant Govind Ram Verma and Fitter Jahoor Ahmed alleging

therein that they have misused and embezzled the Govt. money in the matter of purchase of tools for Hand-pumps. After investigation, the police filed challan for the offences under Sections 467, 468, 471 and 120-B IPC. Along with the challan, the Additional Public Prosecutor appearing before the trial court filed an application under Section 169 Cr.P.C. and a letter issued by the Panchayati Raj Department, Govt. of Rajasthan, Jaipur dated 9.6.2003 addressed to the District Police Superintendent, Dungarpur, stating therein that on the relevant date of physical verification of the store, since the tools were kept at some other place, therefore, they were not found in the store. However, subsequently, those very tools were distributed to the Hand-pump Mistries and therefore, the purchased material has been used. However, financial irregularities appear to have been committed by Pandiya, and therefore, the State Government instead of according sanction to prosecute the petitioner, decided to proceed against the petitioner departmentally under the C.C.A.Rules. In these circumstances, the prosecution sought release of the present petitioner under Section 169 Cr.P.C. The trial court, dismissed the application and took the cognizance of the offences against the petitioner.

I have heard learned counsel for the parties. Carefully gone through the orders passed by both the courts below and the letter of the State Govt. dated 9.6.2003 filed by

the prosecution.

It is contended by the learned counsel for the petitioner that there is no valid sanction to prosecute the petitioner and therefore, the petitioner is protected by Section 197 Cr.P.C. from being prosecuted. Thus, the trial court fell in error in taking cognizance against the petitioner without there being any valid sanction to prosecute him. Learned counsel has relied on decisions of Hon'ble Supreme Court in Matajog Dobey Vs. H.C. Bhari, AIR 1956 SC 44, in State of Orissa & Ors. Vs. Ganesh Chandra Jew 2004 AIR SCW 1926, in Rakesh Kumar Mishra Vs. State of Bihar and Ors. 2006 AIR SCW 189 and in Sankaran Moitra Vs. Sadhna Das and Anr. 2006 AIR SCW 1695.

In State of Orissa Vs. Ganesh Chandra Jew (supra) Hon'ble Supreme Court held as under :-

> "So far public servants are concerned the cognizance of any offence, by any Court, is barred by S. 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The sanction not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, "no Court shall take cognizance of such offence except with the previous sanction". Use of the words, "no" and "shall" make it abundantly clear that the bar on the exercise of power by the Court to take cognizance of any offence is absolute and complete. Very cognizance is barred. That is the complaint, cannot be taken notice of. According to

> Black's Law Dictionary the word 'cognizance' means "jurisdiction" or "the exercise of jurisdiction" or "power to try and determine causes". In common parlance it means taking notice of. A Court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have committed during discharge of his official duty."

In Rakesh Kumar Mishra Vs. State of Bihar & Ors. (supra) Hon'ble Supreme Court held as under :-

> "The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The police of legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if it chooses to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonable connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned, was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official

> duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty : if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case."

In Sankaran Moitra Vs. Sadhna Das (supra) by majority view, Hon'ble Supreme Court held that it cannot be said that want of sanction under S. 197 (1) did not affect the jurisdiction of the Court to proceed, but it was only one of the defences available to the accused and the accused can raise the defence at the appropriate time. Section 197 (1), its opening words and the object sought to be achieved by it, clearly indicate that a prosecution hit by that provision cannot be launched without the sanction contemplated. It is a condition precedent, as it were, for a successful prosecution of a public servant when the provision is attracted, though the question may arise

necessarily not at the inception, but even at a subsequent stage decision on this question cannot be postponed.

In the instant case, the State Govt. refused to accord sanction, on the contrary, the letter dated 09.6.2003 in clear terms indicates that it was the store keeper who instead of keeping the tools in the store kept the same elsewhere and subsequently they were found and have been distributed to the Hand-pump Mistries and therefore, the State Govt. did not think it proper to prosecute the petitioner but to proceed against him departmentally. Keeping in view, the decisions of Hon'ble Supreme Court referred to above, in my view, no useful purpose would be served to allow the prosecution against the present petitioner without there being sanction under Section 197 Cr.P.C.

In the result, the petition is allowed. The order passed by the trial court dated 17.2.2005 as also order dated 1.7.2006 passed by revisional court, are set aside and the proceeding against the present petitioner stands quashed.

**(H.R.PANWAR),J.**

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